

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KENNETH J. MORRIS,
Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social
Security,

Defendant.

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No. CV-11-13-JPH

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment noted for hearing without argument on July 20, 2012, ECF No. 12, 14. Attorney Lora Lee Stover represents plaintiff; Special Assistant United States Attorney Debra Meachum represents the Commissioner of Social Security (defendant). The parties consented to proceed before a magistrate judge, ECF No. 6. After reviewing the administrative record and briefs filed by the parties, the court **GRANTS** defendant's motion for summary judgment, **ECF No. 14**.

JURISDICTION

Plaintiff applied for disability insurance benefits (DIB) and supplemental security income (SSI) on April 11, 2008 (Tr. 118-131). He alleged disability as of October 22, 2007, due to anxiety, ADHD, anger issues, and bipolar disorder (Tr. 158). The applications were denied initially and on reconsideration (Tr. 69-72, 73-76). Administrative Law Judge (ALJ) Harold Chambers held a hearing on October 26, 2009. Plaintiff, represented by counsel, and a vocational expert testified (Tr. 30-64). On February 12, 2010, the

1 ALJ denied benefits (Tr. 17-27). The Appeals Council denied review
2 on November 18, 2010 (Tr. 1-3), making the ALJ's decision the final
3 decision of the Commissioner. Final decisions are appealable
4 pursuant to 42 U.S.C. § 405(g). Plaintiff filed this complaint on
5 January 12, 2011 (ECF No. 1, 4).

6 **STATEMENT OF THE CASE**

7 The facts of the case are set forth in detail in the record and
8 are briefly summarized here. Plaintiff was 31 years old at onset and
9 33 at the hearing (Tr. 33). He completed tenth grade and has worked
10 as a grocery stocker and customer service representative. He lives
11 with his spouse and their children. When plaintiff testified at the
12 hearing, both children were less than three years old.

13 Plaintiff becomes bored with jobs. He then "finds things to get
14 into trouble," like looking at magazines. He helps care for the
15 children, cooks, cleans, does laundry, helps care for pets, uses a
16 computer, shops, and rides the bus (Tr. 34, 37-38, 40-41, 43-44, 53,
17 180-184, 233, 261-262). He has shoulder and lower back pain but does
18 not take medication (Tr. 46-47).

19 **SEQUENTIAL EVALUATION PROCESS**

20 The Social Security Act (the Act) defines disability as the
21 "inability to engage in any substantial gainful activity by reason
22 of any medically determinable physical or mental impairment which
23 can be expected to result in death or which has lasted or can be
24 expected to last for a continuous period of not less than twelve
25 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also
26 provides that a Plaintiff shall be determined to be under a
27 disability only if any impairments are of such severity that a
28 plaintiff is not only unable to do previous work but cannot,

1 considering plaintiff's age, education and work experiences, engage
2 in any other substantial gainful work which exists in the national
3 economy. 20 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus, the
4 definition of disability consists of both medical and vocational
5 components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

6 The Commissioner has established a five-step sequential
7 evaluation process for determining whether a person is disabled. 20
8 C.F.R. §§ 404.1520, 416.920. Step one determines if the person is
9 engaged in substantial gainful activities. If so, benefits are
10 denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If not,
11 the decision maker proceeds to step two, which determines whether
12 plaintiff has a medically severe impairment or combination of
13 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

14 If plaintiff does not have a severe impairment or combination
15 of impairments, the disability claim is denied. If the impairment is
16 severe, the evaluation proceeds to the third step, which compares
17 plaintiff's impairment with a number of listed impairments
18 acknowledged by the Commissioner to be so severe as to preclude
19 substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(ii),
20 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P, App. 1. If the
21 impairment meets or equals one of the listed impairments, plaintiff
22 is conclusively presumed to be disabled. If the impairment is not
23 one conclusively presumed to be disabling, the evaluation proceeds
24 to the fourth step, which determines whether the impairment prevents
25 plaintiff from performing work which was performed in the past. If
26 a plaintiff is able to perform previous work, that Plaintiff is
27 deemed not disabled. 20 C.F.R. §§ 04.1520(a)(4)(iv),
28 416.920(a)(4)(iv). At this step, plaintiff's residual functional

1 capacity (RFC) assessment is considered. If plaintiff cannot perform
2 this work, the fifth and final step in the process determines
3 whether plaintiff is able to perform other work in the national
4 economy in view of plaintiff's residual functional capacity, age,
5 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
6 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

7 The initial burden of proof rests upon plaintiff to establish
8 a *prima facie* case of entitlement to disability benefits. *Rhinehart*
9 *v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v. Apfel*, 172
10 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is met once
11 plaintiff establishes that a physical or mental impairment prevents
12 the performance of previous work. *Hoffman v. Heckler*, 785 F.3d 1423,
13 1425 (9th Cir. 1986). The burden then shifts, at step five, to the
14 Commissioner to show that (1) plaintiff can perform other
15 substantial gainful activity and (2) a "significant number of jobs
16 exist in the national economy" which plaintiff can perform. *Kail v.*
17 *Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984); *Tackett v. Apfel*, 180
18 F.3d 1094, 1099 (1999).

19 ADMINISTRATIVE DECISION

20 The ALJ found plaintiff's DIB insurance lasted through December
21 31, 2012 (Tr. 17, 19). At step one, the ALJ found plaintiff did not
22 engage in substantial gainful activity after onset (Tr. 19). At step
23 two, he found plaintiff suffers from the severe impairments of
24 degenerative disc disease (DDD) of the lumbar spine; retrolisthesis;
25 connective tissue dysfunction consistent with bilateral shoulder
26 instability; generalized anxiety disorder; borderline personality
27 disorder; and drug use, in full sustained remission by report. *Id.*
28 At step three, the ALJ found plaintiff's medically determinable

1 impairments, alone and in combination, do not meet or medically
2 equal any of the impairments listed in 20 C.F.R., Appendix 1,
3 Subpart P, Regulations No. 4 (the Listings)(Tr. 20-21). ALJ Chambers
4 found plaintiff less than fully credible (Tr. 23). At step four, he
5 relied on a vocational expert's testimony and found plaintiff is
6 unable to perform any past relevant work (Tr. 25, 58). At step five,
7 again relying the VE, the ALJ found plaintiff can do other jobs such
8 mail clerk, office helper, and food/beverage order clerk (Tr. 27,
9 58-59). The ALJ concluded plaintiff has not been under a disability
10 as defined in the Social Security Act since onset on October 22,
11 2007. Id.

12 STANDARD OF REVIEW

13 Congress has provided a limited scope of judicial review of a
14 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold
15 the Commissioner's decision, made through an ALJ, when the
16 determination is not based on legal error and is supported by
17 substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th
18 Cir. 1985); *Tackett v. Apfel*, 180 F.3d at 1097 (9th Cir. 1999).
19 "The [Commissioner's] determination that a plaintiff is not
20 disabled will be upheld if the findings of fact are supported by
21 substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9th
22 Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is
23 more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112,
24 1119 n. 10 (9th Cir. 1975), but less than a preponderance.
25 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
26 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
27 573, 576 (9th Cir. 1988). Substantial evidence "means such
28 evidence as a reasonable mind might accept as adequate to support

1 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
2 (citations omitted). "[S]uch inferences and conclusions as the
3 [Commissioner] may reasonably draw from the evidence" will also be
4 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On
5 review, the Court considers the record as a whole, not just the
6 evidence supporting the decision of the Commissioner. *Weetman v.*
7 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989)(quoting *Kornock v.*
8 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

9 It is the role of the trier of fact, not this Court, to
10 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
11 evidence supports more than one rational interpretation, the Court
12 may not substitute its judgment for that of the Commissioner.
13 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
14 (9th Cir. 1984). Nevertheless, a decision supported by substantial
15 evidence will still be set aside if the proper legal standards
16 were not applied in weighing the evidence and making the decision.
17 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432,
18 433 (9th Cir. 1987). Thus, if there is substantial evidence to
19 support the administrative findings, or if there is conflicting
20 evidence that will support a finding of either disability or
21 nondisability, the finding of the Commissioner is conclusive.
22 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

23 ISSUES

24 The question is whether the ALJ's decision is supported by
25 substantial evidence and free of legal error. Plaintiff alleges the
26 ALJ's residual functional capacity determination is flawed, he asked
27 an incomplete hypothetical, and the evidence as a whole fails to
28 support the ALJ's finding that plaintiff is not disabled, ECF No. 13

at 7.

The Commissioner responds that the reasons for the ALJ's credibility assessment are clear and convincing, and his reasons for discrediting some of the contradicted medical evidence are specific, legitimate and supported by substantial evidence. Asserting the decision is free of harmful legal error and supported by substantial evidence, the Commissioner asks the Court to affirm (ECF No. 15 at 11-20).

DISCUSSION

A. Credibility

Plaintiff alleges the ALJ "ignored" both the "effects of pain from Plaintiff's physical impairments" and "limitations stemming from his mental impairments" (ECF No. 13 at 9-11). Plaintiff alleges the error was caused by the ALJ's failure to fully credit plaintiff's testimony and allegations of disabling limitations. Defendant responds that the ALJ's credibility findings are specific and supported by substantial evidence and, although perhaps not required, by clear and convincing reasons as well (ECF No. 15 at 13, referring to Tr. 22-25). The court agrees the ALJ's reasons are clear and convincing.

The ALJ found plaintiff less than credible because objective medical evidence did not support claimed disabling mental and physical limitations, treatment was inconsistent and generally conservative, and pain medication was not prescribed. Mental health symptoms were treated effectively with intermittent use of prescribed medication. Finally, plaintiff's activities were inconsistent with allegedly disabling limitations (Tr. 23-25).

It is the province of the ALJ to make credibility determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.

1995). However, the ALJ's findings must be supported by specific cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant produces medical evidence of an underlying medical impairment, the ALJ may not discredit testimony as to the severity of an impairment because it is unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). "General findings are insufficient: rather the ALJ must identify what testimony is not credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

In weighing credibility, the ALJ may consider the nature, location, onset, duration, frequency, radiation, and intensity of any pain; precipitating and aggravating factors (e.g., movement, activity, environmental conditions); type, dosage, effectiveness, and adverse side effects of any pain medication; treatment, other than medication, for relief of pain; functional restrictions; the claimant's daily activities; and "ordinary techniques of credibility evaluation." *Bunnell v. Sullivan*, 947 F.2d 341, 346 (9th Cir. 1991)(citing Social Security Ruling (SSR) 88-13; quotation marks omitted). The ALJ may also consider an unexplained failure to seek treatment. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).

Contrary to plaintiff's allegation, the ALJ provided clear and convincing reasons for discrediting his testimony and allegations.

The ALJ noted plaintiff does not use pain relievers [narcotic or otherwise] and treatment has been conservative and sporadic. When plaintiff applied for benefits, he was not taking any medication.

1 The ALJ notes this detrimentally affects the credibility of
2 plaintiff's pain complaints (Tr. 23, citing Exhibit 2F/2-3, 9F/13,
3 9F/50, 9F/63, 10F, Tr. 162). The amount and type of treatment
4 received is also a permissible consideration in credibility
5 findings. See *Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir.
6 2007)("evidence of 'conservative treatment' is sufficient to
7 discount a claimant's testimony regarding severity of an
8 impairment"). An ALJ may also discredit subjective pain complaints
9 where the claimant received "minimal" and "conservative" treatment.
10 *Meanel v. Apfel*, 172 F.3d at 1114. Plaintiff's allegation he suffers
11 from disabling pain is undermined by his failure to consistently
12 seek treatment, to use any medication, and by solely conservative
13 treatment, including physical therapy.

14 Moreover, the ALJ notes plaintiff initially alleged he was
15 unable to work due to mental impairments. He did not allege pain
16 prevents him from working (Tr. 22, citing Exhibit 3E at Tr. 158).

17 The ALJ observes plaintiff's daily activities do not appear as
18 limited as expected, given the intensity of pain alleged. The record
19 reveals plaintiff regularly cares for his young daughter, uses
20 public transportation, socializes with family, cooks, cleans, does
21 laundry, shops independently when needed, and uses the internet (Tr.
22 21, 23).

23 It is well-established that the nature of daily activities may
24 be considered when evaluating credibility. *Fair v. Bowen*, 885 F.2d
25 597, 603 (9th Cir. 1989). Activities such as caring for young
26 children may undermine claims of disabling impairment. See *Rollins*
27 *v. Massanari*, 261 F.3d 853, 857 (9th Cir.2001). The record supports
28 the ALJ's observation that plaintiff's daily activities are

inconsistent with claims of disabling limitations.

1 In addition, the court notes plaintiff's numerous inconsistent
2 statements. Plaintiff has described his longest employment as eight
3 months at a Pizza Hut (Tr. 261, July 2008) and as less than 2-3
4 months (Tr. 187, April 2008). He "walked off" his job at Safeway
5 when he was asked to remove his earrings (Tr. 186) and "stopped
6 working due to social anxiety" (Tr. 158). This also diminishes
7 credibility.

8 If properly supported, the ALJ's credibility determination is
9 entitled to "great deference." *See Green v. Heckler*, 803 F.2d 528,
10 532 (9th Cir. 1986). Where the ALJ makes a careful consideration of
11 subjective complaints and provides adequate reasons for rejecting
12 them, the ALJ's well-settled role as the judge of credibility will
13 be upheld as based on substantial evidence. *Matthews v. Shalala*, 10
14 F.3d 678, 679-80 (9th Cir. 1993). The facts in this record were
15 properly considered, and constitute clear and convincing reasons for
16 finding plaintiff's complaints less than credible.

17 **B. Weighing opinion evidence - standards**

18 In social security proceedings, the claimant must prove the
19 existence of a physical or mental impairment by providing medical
20 evidence consisting of signs, symptoms, and laboratory findings; the
21 claimant's own statement of symptoms alone will not suffice. 20
22 C.F.R. § 416.908. The effects of all symptoms must be evaluated on
23 the basis of a medically determinable impairment which can be shown
24 to be the cause of the symptoms. 20 C.F.R. § 416.929.

25 A treating physician's opinion is given special weight because
26 of familiarity with the claimant and the claimant's condition. *Fair*
27 *v. Bowen*, 885 F.2d 597, 604-605 (9th Cir. 1989). However, the

treating physician's opinion is not "necessarily conclusive as to either a physical condition or the ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)(citations omitted). More weight is given to a treating physician than an examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). Correspondingly, more weight is given to the opinions of treating and examining physicians than to nonexamining physicians. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir. 2004). If the treating or examining physician's opinions are not contradicted, they can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the ALJ may reject an opinion if he states specific, legitimate reasons that are supported by substantial evidence. See *Flaten v. Secretary of Health and Human Serv.*, 44 F.3d 1435, 1463 (9th Cir. 1995).

C. Psychological limitations

Plaintiff alleges the ALJ erred by failing to incorporate all mental limitations in the hypothetical. In support of greater limitations, plaintiff cites his own [discredited] testimony and the results of a March 2008 evaluation by Abigail Osborne-Elmer, MS, LMHC, under the supervision of W. Scott Mabee, Ph.D. (ECF No. 13 at 10, referring to Tr. 231-239)(hereafter, Mabee). First plaintiff alleges the hypothetical failed to include how "anxiety would affect his ability to attend and concentrate, and how stress in the workplace would affect this condition." Second, plaintiff points out the ALJ limited him to working with the public face-to-face no more than half the time, to working with the public by phone frequently, and to occasional contact with coworkers; but, plaintiff alleges, these limitations are not supported by the evidence. Next, plaintiff

1 alleges the ALJ failed to cite "any clear and convincing evidence to
2 justify the rejection" of Dr. Mabee's opinion, "other than to
3 comment that Plaintiff's treatment has been sporadic." Finally,
4 plaintiff alleges the ALJ failed to take into account his use of
5 psychotropic medication prescribed by Dr. Condon (ECF No. 13 at 9-
6 10).

7 Defendant responds that the ALJ properly rejected some of Dr.
8 Mabee's opinions because they are inconsistent with his own
9 objective findings in the same report. Dr. Mabee opined anxiety
10 disorder would likely interfere with plaintiff's ability to initiate
11 and maintain employment, but the ALJ rejected this conclusion
12 because it was inconsistent with objective findings in the same
13 report, ECF No. 15 at 17, citing Tr. 25, 235.

14 Defendant is correct. The ALJ observes Dr. Mabee assessed
15 plaintiff's GAF at 63, indicating only mild symptoms or
16 difficulties, rather than symptoms "likely to interfere" with
17 maintaining employment. The ALJ points out additional
18 inconsistencies:

19 While Dr. Osborne-Elmer found the claimant's anxiety
20 disorder would likely "temporarily" interfere with his
21 ability to initiate and maintain employment and that
22 his excessive worry and tendency to ruminate on
23 problems would likely affect his ability to maintain
24 long-term employment "at this time," she nevertheless
25 "found the claimant had only minimal problems completing
26 simple and complex tasks. He had no impairment in
27 memory. Judgment was considered low average [sic] found
28 likely to improve with vocational training and job
assistance (Exhibit 2F)."

(Tr. 24).

24 At this evaluation plaintiff admitted he fears going to stores
25 because he worries he will steal, get caught, and go back to jail
26 (Tr. 21, 232). The ALJ notes in July 2008, plaintiff told a DSHS
27

interviewer he does not want the "\$8 an hour jobs, but at least a \$15 an hour job," (Tr. 24, 262) indicating plaintiff felt he was able to work.

In August 2008 plaintiff said he took no medication (Tr. 214). A September 18, 2008 ER record shows situational psychological symptoms. Plaintiff complained of depression and suicidal thoughts. His spouse told him a day earlier she wanted a divorce (Tr. 298-299). The ALJ observes plaintiff was assessed with situational depression, stress reaction, and suicidal ideation, but the record also indicates plaintiff was already feeling "quite a bit better by the time he was seen." Plaintiff reported prior counseling but no prior prescribed antidepressants or suicide attempts. Mental health counseling was offered but plaintiff declined it. He was given a prescription for anxiety and released (Tr. 24, 299).

A month later, in October 2008, plaintiff asked for a mental health referral. He thought he may have bipolar disorder and complained of increased stress lately (Tr. 270). He was not seen again for five months, in March 2009. In July 2009, plaintiff gave no history of any mental condition and none was found (Tr. 24, Exhibits 9F, 10F). The ALJ correctly notes these records show mental health treatment has been sporadic, indicating no more than intermittent and situational symptoms (Tr. 25). Donald Condon, M.D., prescribed antidepressants but, as noted, plaintiff did not follow through consistently.

Plaintiff's treatment providers refused to prescribe narcotic pain medication in March and May 2009, noting he was "on too many medications for pain." (Tr. 275, 277). In October 2009, treating PAC Cardwell again denied plaintiff's request for pain medication (Tr.

344).

With respect to the mental limitations assessed, it is noteworthy that agency reviewing psychologist James Bailey, Ph.D., opined plaintiff is able to work around others but not if high levels of cooperation are required. He can have superficial contact with the public and co-workers, and is able to perform complex tasks (Tr. 245). The ALJ interpreted these limitations and translated them into the RFC assessed. The ALJ did not err.

D. Physical limitations

Plaintiff alleges the ALJ should have found bilateral shoulder instability precludes reaching overhead and in all directions. He alleges the ALJ omitted these limitations by "ignoring testimony to the contrary by the Plaintiff." ECF No. 13 at 11. The Commissioner responds that the ALJ properly discredited plaintiff's credibility, and the objective medical evidence does not support assessing greater limitations, ECF No. 15 at 13-16.

The Commissioner is correct.

No doctor has restricted plaintiff's activities (Tr. 23). The record shows back pain in September 2007 (Exhibit 9F/48, Tr. 282). A month later range of motion was full (Tr. 23, 281). In March 2008 plaintiff was not taking any medication for any physical condition (Tr. 232).

In April 2008, plaintiff stated he could stand 1-3 hours, sit 2-4 hours, lift 30 pounds occasionally, and walk 2-3 miles (Tr. 185).

In August 2008 plaintiff punched a fire door when angry and fractured a finger. This was repaired and healed. Plaintiff was described as "very pleasant, cooperative, and appropriate." (Tr.

267, 306, 309, 312, 322-324).

1 In March 2009 plaintiff had no back pain but connective tissue
2 dysfunction consistent with bilateral shoulder instability was
3 revealed by range of motion testing. The ALJ notes shoulder x-rays
4 were unremarkable, and revealed only minimal degenerative disc
5 disease and trace retrolisthesis (Tr. 23, 276, 318-319, 330-331,
6 Exhibit 9F/50). In July 2009 plaintiff gave no history of a back
7 impairment and showed no obvious distress on examination. He was
8 seen for complaints of a puncture wound and a foot fissure (Tr. 23,
9 340).

10 The ALJ's limitation to a range of light work is fully
11 supported by the medical record.

12 **E. RFC and hypothetical**

13 Plaintiff alleges the RFC is flawed because the ALJ should have
14 included the psychological and physical limitations discussed above.
15 The court has found the ALJ properly weighed the evidence. The
16 allegation is without merit.

17 A hypothetical question posed to a vocational expert must
18 contain "all of the limitations and restrictions" that are supported
19 by substantial evidence. *Magallanes v. Bowen*, 881 F.2d 747, 756 (9th
20 Cir. 1989); see also *Rollins v. Massanari*, 261 F.3d 853, 863 (9th
21 Cir. 2001). "If the record does not support the assumptions in the
22 hypothetical, the vocational expert's opinion has no evidentiary
23 value." *Lewis v. Apfel*, 236 F.3d 503, 517 (9th Cir. 2001).

24 Notwithstanding plaintiff's contrary allegation, the ALJ
25 incorporated all supported limitations in his question to the
26 vocational expert.

27 Having reviewed the record and the ALJ's conclusions, this

court finds the ALJ's decision is free of legal error and supported by substantial evidence.

IT IS ORDERED:

1. Defendant's Motion for Summary Judgment, **ECF No. 15**, is **GRANTED**.

2. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **DENIED**.

The District Court Executive is directed to file this Order and provide a copy to the parties. Judgment shall be entered for **DEFENDANT** and the file **CLOSED**.

DATED August 16th, 2012.

S/James P. Hutton

JAMES P. HUTTON
UNITED STATES MAGISTRATE JUDGE